***THE HON'BLE SRI JUSTICE N.V. RAMANA**

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+WRIT PETITION NO.14984 OF 2001

%Dated 16.03.2006

Sd. Fasiuddin, S/o Kamaluddin, Ex-Conductor, E.No.101717, R/o H.No.3-47, Village Post and Mandal Neridigonda, Adilabad, Adilabad District.

..... PETITIONER

VERSUS

$ 1 The Depot Manager, APSRTC, Nirmal Depot, Adilabad District and others.

.....RESPONDENTS

! Counsel for Petitioner: Sri Sadu Rajeshwar Reddy

^ Counsel for Respondent Nos.1 and 2: Standing Counsel for APSRTC

Counsel for Respondent No.3: GP for Labour.

< GIST:

> HEAD NOTE:

? Cases referred:

1. AIR 1987 SC 2043
2. AIR 1979 SC 582
3. APLJ 1991 (1) 71 SNRC
4. 1995 Lab.I.C. 2133
5. 1996 Lab.I.C. 109
6. 1997 (1) An.W.R. 133
7. 2005 (2) SCJ 242

8. (2006) 1 SCC 430

9. (2005) 3 SCC 254

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 14984 of 2001

O r d e r:

Assailing the award dated 03.03.1991, passed by the Labour Court, Godavari Khani, Karimnagar District, in I.D. No. 5 of 1998, published in G.O. Rt. No. 1071, dated 30.04.2001, the petitioner filed the present writ petition.

The petitioner was appointed as Conductor in the respondents-APSRTC in 1983. While he was working as such, a charge memo, leveling eight charges, was issued to him on 12.06.1997. Upon enquiry into the said charges, and based on the enquiry report, which held the charges proved, the petitioner was removed from service vide proceedings dated 10.11.1997 of the disciplinary authority. The appeal preferred thereagainst, was rejected by the appellate authority vide orders dated 24.12.1997. Assailing the same, the petitioner raised an industrial dispute in I.D. No. 5 of 1998 before the Labour Court, which by award dated 03.03.1991, published in G.O. Rt. No. 1071, dated 30.04.2001, dismissed the same, upholding the orders of the disciplinary authority as confirmed by the appellate authority. Assailing the said award and notification, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner did not commit any cash and ticket irregularities, and this is evident from the fact that the passengers who did not take the tickets had given statements that they did not pay the fare to the petitioner. He submitted that at the time of check, about 68 passengers were traveling in the bus, and non-issuance of tickets to seven passengers, cannot be said to be so grave a misconduct, warranting dismissal from service. He submitted that the petitioner despite denying the eight charges leveled against him, yet the enquiry officer held them proved, and based on the said report, the disciplinary authority passed order of dismissal, as confirmed by the appellate authority and the Labour Court, which is illegal and arbitrary.

He submitted that the petitioner is having six children, and considering this fact, the Labour Court ought to have exercised the discretion vested in it under Section 11-A of the Industrial Disputes Act, 1947 and interfered with the punishment of dismissal from service, imposed by the disciplinary authority, as confirmed by the appellate authority. He submitted that the punishment of dismissal from service imposed on the petitioner is disproportionate to the proved charges. In support of his

submission that if the Labour Court failed to exercise the jurisdiction vested in it, then the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, interfere and modify the punishment, imposed by the disciplinary authority, as confirmed by the appellate authority and Labour Court, and to prove that there are instances where the apex Court and this Court had interfered with punishments imposed by the disciplinary authority in cases cash and ticket irregularities, placed reliance on several decisions of the apex Court and of this Court in **Ram Kumar v. State of Haryana**, **G.T. Lad v. Chemicals & Fibres India Ltd.**, **T. Ali Akbar v. Labour Court, Anantapur**, **R.S.R.T.C. v. Shri Ram Yadav**, **K.S.R.T. Corporation v. B.M. Patil**, **T.B. Singh v. Industrial Tribunal-cum-Labour Court** and **Rajasthan State Road Transport Corporation v. Bhik Nath.** He thus prayed that impugned order be set aside and the petitioner be reinstated into service with full backwages.

The learned Standing Counsel for respondent Nos. 1 and 2 reiterating the stand taken in the counter-affidavit submitted that the petitioner committed serious cash and ticket irregularities, and the Enquiry Officer having found him guilty of the charges, the disciplinary authority imposed punishment of dismissal from service, which was confirmed by the appellate authority and the Labour Court. Having regard to the nature of proved charges, the punishment of dismissal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Nos. 1 and 2-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

As many as eight charges are leveled against the petitioner. All the charges stood proved against the petitioner in the departmental enquiry. In the departmental enquiry, which the petitioner does not dispute, was conducted according to the rules, the Enquiry Officer found that the petitioner having collected fare from seven passengers, issued the already issued tickets to them, and thus pocketed the value of the said tickets, and when the checking officials were about to book the case, the petitioner threatened to commit suicide and left the bus and entered into heated arguments with the checking officials, and accordingly held the charges proved. The disciplinary authority considering the nature of the proved charges, imposed punishment of dismissal from service, which was confirmed in appeal. The Labour Court, upon analyzing the evidence before it, disbelieved the version of the petitioner that the passengers over-travelled the stage to which they took ticket, and having regard to the fact that he had issued the already issued tickets to five passengers and thereby committed cash and ticket irregularities, and keeping in

view his conduct with the checking officials at the time when they exercised the check, felt that the punishment of dismissal from service imposed by the disciplinary authority, as confirmed by the appellate authority, is proportionate to the proved charges, and

I see no reason whatsoever to interfere therewith, more so when all the charges leveled against the petitioner stood proved in the departmental enquiry and when the petitioner failed to point out any of the grounds for judicial review.

Merely because the petitioner is having six children, is not a ground for this Court to interfere with the punishment imposed by the disciplinary authority for the proved charges. Though in some of the cases relied upon by the petitioner, the Courts have taken a lenient and sympathetic view and substituted the punishment of removal from service imposed by the disciplinary authority with a lesser punishment, but the Courts have changed their earlier views, which were workmen oriented. In **Hombe Gowda Educational Trust v. State of Karnataka**, the apex Court held thus:

> The Supreme Court has come a long way from its earlier view points. The recent trend in the decisions of the Supreme Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of the Supreme Court it has been noticed how discipline at work place/industrial undertakings received a set back. In view of the change in economic policy of the country, it may not be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law.

In order to maintain balance in the industrial relations and to maintain and inculcate discipline in the cadres, the Courts having regard to the scope of judicial review of the decisions of the administrative authorities, are interfering only if the administrative authority's decision is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court and is in defiance to moral standards. In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**, the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, as many as eight charges were leveled against the petitioner, and all of them stood proved, and having regard to the gravity and seriousness of the proved charges, the respondents having lost confidence in the petitioner, dismissed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, upholding the punishment of dismissal from service imposed by the disciplinary authority as confirmed in appeal.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 16th March, 2006.

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